

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:	ADMINISTRATIVE ORDER
<b>MEYER &amp; HAMANN EXCAVATING, INC.</b>	NO. 2013-AQ- 04 NO. 2013-SW- 04

TO: Meyer & Hamann Excavating, Inc.  
Ricky L. Meyer, Registered Agent  
29159 10<sup>th</sup> Avenue  
New Liberty, Iowa 52765

**I. SUMMARY**

This order requires you to comply with all open burning and solid waste regulations, and pay a \$9,920.00 penalty subject to your appeal rights stated in this order.

Any questions regarding this administrative order should be directed to:

**Relating to technical requirements:**

Kurt Levetzow  
Iowa Department of Natural Resources  
Field Office No. 6  
1023 W. Madison Street  
Washington, Iowa 52353-1623  
Phone: 319/653-2135

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-6243

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Meyer & Hamann Excavating, Inc., provides services to the agricultural community, specializing in installing drainage tile, building terraces in row crop fields, and conducting demolition activities.

2. During the afternoon of January 28, 2011, DNR Field Office 6 received an anonymous phone call reporting that a contractor was beginning the process of burning three demolished structures within the city limits of Dixon, Scott County, Iowa. In response to the anonymous complaint, on January 28, 2011, Kurt Levetzow of DNR Field Office 6 contacted the Scott County Sheriff's Office. The Scott County Sheriff's Office directed Mr. Levetzow to Deputy Ryan Strom who had just arrived at 312, 314, and 316 Davenport Street, Dixon, Iowa (the site). Deputy Strom agreed to take photographs at the site and submit these photographs and his report to Mr. Levetzow at DNR Field Office 6.

3. While at the site on January 28, 2011, Deputy Strom spoke to Rick Meyer, who was using an excavator to move debris into a pile by a large fire. Mr. Meyer stated that he had purchased the land and demolished the structures at the site, and that he was burning the remaining solid waste. Mr. Meyer stated that he had permission from the Dixon Fire Department for the open burn. While at the site, Deputy Strom contacted Tim Huey at the Scott County Planning and Development Office. Mr. Huey told Deputy Strom that building permits are needed for both construction and demolition activities in Scott County, and that no record existed of the issuance of a building permit for demolition at the site. Deputy Strom requested that the Dixon Fire Department be dispatched to the site, and the Dixon Fire Department arrived and put out the fire at the site.

4. On January 31, 2011, Mr. Meyer applied to the Scott County Planning and Development Office for a permit to demolish the residential structures at 312, 314, and 316 Davenport Street in Dixon, Iowa. The Scott County Planning and Development Office issued Permit No. DX00249 to Meyer & Hamann Excavating, Inc., on January 31, 2011. Permit No. DX00249 was signed by Mr. Meyer and states, "I do hereby agree to do the above work in conformity with the laws of the State of Iowa and the Construction Code of Scott County." Further, section 5-4 of the Scott County Construction Code states that "[i]f any conflict exists between the adopted International Codes, National Electrical Code, Uniform Codes, and **State Codes**, the more restrictive code requirement applies." (emphasis added)

5. On February 1, 2011, Mr. Levetzow spoke to Mr. Meyer by phone. Mr. Meyer stated that he demolished the structures at the site and set them on fire on

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January 28, 2011. Mr. Meyer claimed that he had secured permission prior to demolition, from both the Dixon Fire Department and the Scott County Planning and Development Office, to demolish the buildings at the site and to burn the resulting solid waste. Mr. Levetzow informed Mr. Meyer that he must properly dispose of the burned and unburned solid waste that was left at the site following the January 28, 2011, open burning that had been extinguished by the Dixon Fire Department. Mr. Meyer was instructed to take the remaining solid waste to the Scott County Sanitary Landfill. At that point, Mr. Meyer told Mr. Levetzow that since he had received the January 31, 2011, permit from the Scott County Planning and Development Office, Mr. Meyer had burned the remaining solid waste at the site.

6. A February 4, 2011, Notice of Violation (NOV) letter from DNR cited Mr. Meyer for illegal open burning and for violation of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP). The February 4 NOV letter also informed Mr. Meyer that while demolition of one single family dwelling is exempted from the asbestos NESHAP, demolishing more than one single family dwelling as part of a project is not exempt.

7. On February 7, 2011, DNR Field Office 6 received a copy of Deputy Strom's report and photographs of the site. On February 9, Mr. Levetzow obtained information from Larry Linnenbrink of the Scott County Health Department that no one from the Scott County Health Department or the Scott County Planning and Development Office gave, or would have given, permission to burn construction and demolition waste. Mr. Levetzow also was informed on February 9 by Tim Huey of the Scott County Planning and Development Office that his office did not grant permission to Mr. Meyer to open burn at the site.

8. On February 10, 2011, Mr. Levetzow conducted a follow-up inspection at the site. No one was present at the time of arrival, but Mr. Levetzow observed a track hoe and a large pile of smoldering ash and dirt that had been used to cover and smother the burn pile. At that time, Mr. Levetzow called Jim Tweed, Chief of the Dixon Fire Department. Mr. Tweed stated that he did not give permission to burn the structures.

9. The debris pile seen in the photographs of the site is estimated to contain approximately 128 tons of solid waste. Disposal costs at the Scott County Sanitary Landfill are \$65.00 per ton for asbestos-laden waste. Therefore, proper disposal would have cost at least \$8,320.00.

### III. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of

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air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited.

3. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal NESHAP for asbestos found at 40 CFR Part 61, Subpart M.

4. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that any parts of the asbestos NESHAP were complied with, including thorough inspection, sampling for asbestos, asbestos removal, and department notification. The above facts indicate violations of these provisions.

5. 40 CFR 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no evidence of receiving the required notification for the demolition of the structures at the site. The above facts indicate a violation of this provision.

6. 40 CFR 61.145(c)(10) provides that if a building is demolished by intentional burning, then all asbestos containing material must be removed prior to burning in accordance with the provisions of the asbestos NESHAP. Mr. Meyer intentionally demolished and burned demolition debris from the structures at the site without indentifying or removing any asbestos containing material. Further, Iowa law specifically recognizes that asphalt shingles should be removed from buildings prior to the burning of any demolition debris. See Iowa Code section 455B.133(9) and 567 IAC 23.2(3)(g)(6).

7. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

8. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the

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Director. The illegal open dumping of solid waste in this case demonstrates non-compliance with this provision.

**V. ORDER**

THEREFORE, DNR orders Meyer & Hamann Excavating, Inc., to do the following:

1. Meyer & Hamann Excavating, Inc., shall pay a penalty of \$9,920.00 within 60 days of the date this order is signed by the Director.
2. Meyer & Hamann Excavating, Inc., shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at any location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste and open burning.
3. Meyer & Hamann Excavating, Inc., shall remove any and all solid waste remaining at the site by no later than March 1, 2013; and shall provide to DNR Field Office 6 receipts showing proper disposal of all solid waste materials from the site.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Meyer & Hamann Excavating, Inc. has achieved an economic benefit by failing to comply with the asbestos NESHAP. Meyer & Hamann Excavating, Inc. saved substantial costs by failing to contract with a certified asbestos inspection company to conduct a thorough inspection of the three structures prior to demolition. Moreover, Meyer & Hamann Excavating, Inc. has achieved an economic benefit by conducting illegal open burning at the site. DNR observed approximately 128 tons of debris at the site, and the disposal costs at the Scott County Sanitary Landfill are \$65.00 per ton for asbestos-laden waste.

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Therefore, proper disposal would have cost at least \$8,320.00 and that amount is assessed for economic benefit.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Further, asbestos has been directly linked to mesothelioma, asbestosis and other cancers due to exposure from improper handling. Therefore, a penalty of \$1,500.00 is assessed for the gravity of the violations.

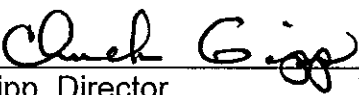
Culpability – Meyer & Hamann Excavating, Inc., has intentionally and knowingly allowed the open dumping and open burning of prohibited solid wastes. Meyer & Hamann Excavating, Inc. has a duty to remain knowledgeable of DNR's rules and to properly dispose of demolition debris, including material that may contain asbestos. Therefore, a penalty of \$100.00 is assessed for culpability.

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.

  
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Chuck Gipp, Director  
Iowa Department of Natural Resources

Dated this 7<sup>th</sup> day of  
February, 2013.

Scott County Air Quality file; Anne Preziosi; DNR Field Office 6; VII.C.1